

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

ASPEN AMERICA INSURANCE COMPANY
a/s/o AMK HOLDINGS LLC

Plaintiffs,

v.

ROBERT BARRY AND WINEBOW IMPORTS
INC. and WINEBOW, INC.

Defendants.

INDEX NO:

COMPLAINT AND JURY DEMAND

Plaintiff, complaining of the Defendants, says:

JURISDICTION

1. Plaintiff is a Corporation of the State of Texas, with its principal place of business in the State of New York.
2. Defendant Barry is a citizen of the State of New Jersey with a residence at 19 Butler Place, Haskell, New Jersey.
3. Defendants Winebow Imports Inc. and Winebow, Inc. (hereinafter referred to as "Winebow") are Corporations in the State of Delaware and New Jersey, respectively having their principal places of business in New Jersey and California, respectively.
4. The amount in controversy exceeds \$75,000.00.
5. Accordingly, this Court has jurisdiction pursuant to 28 United States Code §1332(a)(1).

GENERAL ALLEGATIONS

6. On or about August 30, 2018, the Defendant Barry was an employee of defendants, Winebow and the driver of a truck leased by Winebow when it struck a historic metal sidewalk appurtenant and adjacent to the property of AMK Holdings, LLC at 42 Walker Street, New York, New York, causing great damage to same and related interior damage to the structure.

7. The plaintiff was the insurer of AMK Holdings, LLC, and, having been presented with an insurance claim, has paid monies in excess of \$75,000.00 to AMK Holdings, LLC.

8. By virtue of its payment to AMK Holdings, LLC, plaintiff is subrogated to all rights of AMK Holdings, LLC against the Defendants.

COUNT I

9. Plaintiff repeats each and every allegation of the General Allegations as though fully set forth at length herein.

10. Defendant Barry was careless and negligent in his operation of the vehicle., such that the damages incurred by the plaintiff's subrogor were a direct result thereof.

WHEREFORE, Plaintiff seeks judgment against the Defendant, Robert Barry, for all damages incurred, together with interest, costs of suit, attorney's fees and such other relief as this Court may find just and appropriate.

COUNT II

11. Plaintiff repeats each and every allegation of the General Allegations and Count One as though fully set forth at length herein.

12. Pursuant to the doctrine of respondeat superior, defendants Winebow are vicariously liable for the acts of the Defendant Barry and plaintiff is entitled to recover from those defendants.

WHEREFORE, Plaintiff seeks judgment against the Defendants Winebow for all damages incurred, together with interest, costs of suit, attorney's fees and such other relief as this Court may find just and appropriate.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, Stanley W. Kallmann, Esq., is hereby designated as trial counsel in this action.


JURY DEMAND

Plaintiffs hereby requests a jury trial on all questions of fact raised by its Complaint.

**GENNET, KALLMANN, ANTIN,
SWEETMAN & NICHOLS, P.C.**

Dated: January 31, 2020

By: _____


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